

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROSLEE HAMILTON, an infant under the age of 14 years
by her father and natural guardian FABIAN McCALLA and
FABIAN McCALLA,

Plaintiff(s),

Index No. 08-CIV-00083

-against-

ANSWER

CITY OF MOUNT VERNON, THE MOUNT VERNON
POLICE DEPARTMENT and POLICE OFFICERS
"JOHN DOE", "RICHARD ROE", fictitious names, true
names unknown,

Defendant(s).

(WCC)(MDF)

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Defendants, by the Office of the Corporation Counsel, HELEN M.

BLACKWOOD answering the Complaint of Plaintiff alleges, upon information and
belief:

AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION

1. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph number "1" of the Complaint.
2. Admits the allegations contained in paragraphs numbered "2", "3",
3. Denies the truth of each and every allegation contained in paragraphs "4", "5" and "6" of the Complaint except admits that a document purporting to be a notice of claim was filed with the City and that the City has not made any adjustment to the Plaintiff and states that at this time the 50-H has not been completed but has been duly requested.
4. Denies the truth of each and every allegation contained in paragraph number "7" and "9" of the Complaint except admits that there was a premises within

the City of Mount Vernon located at 58 South 14th Avenue and that Plaintiffs were present there on December 15, 2006.

5. Denies the truth of each and every allegation contained in paragraph number "8" of the Complaint and refers all questions of law to the Court.

6. Denies the truth of each and every allegation contained in paragraphs numbered "10," "11," "12," "13," "14," "15," "16," "17" and "18" of the Complaint.

AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION

7. Answering paragraph number "19" of plaintiff's Verified Complaint, Defendants repeats, reiterates and realleges each and every denial and admission contained in paragraphs numbered "1" through "6" with the same force and effect as if fully set forth at length herein.

8. Denies the truth of each and every allegation contained in paragraphs numbered "20," "21" and "22" of the Complaint.

AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION

9. Answering paragraph number "23" of plaintiff's Verified Complaint, Defendants repeats, reiterates and realleges each and every denial and admission contained in paragraphs numbered "1" through "6" with the same force and effect as if fully set forth at length herein.

10. Denies the truth of each and every allegation contained in paragraphs numbered "24," "25" and "26" of the Complaint.

AS AND FOR AN ANSWER TO THE FOURTH CAUSE OF ACTION

11. Answering paragraph number "27" of plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission

contained in paragraphs "1" through "8" with the same force and effect as if fully set forth at length herein.

12. Denies the truth of each and every allegation contained in paragraphs numbered "28", "29" and "30" of the Complaint.

AS AND FOR AN ANSWER TO THE FIFTH CAUSE OF ACTION

13. Answering paragraph number "31" of plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs "1" through "10" with the same force and effect as if fully set forth at length herein.

14. Denies the truth of each and every allegation contained in paragraphs numbered "32", "33", "34", "35", and "36" of the Complaint.

AS AND FOR AN ANSWER TO THE SIXTH CAUSE OF ACTION

15. Answering paragraph number "37" of plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs "1" through "12" with the same force and effect as if fully set forth at length herein.

16. Denies the truth of each and every allegation contained in paragraphs numbered "38" and "39" of the Complaint.

AS AND FOR AN ANSWER TO THE SEVENTH CAUSE OF ACTION

17. Answering paragraph number "40" of plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs "1" through "14" with the same force and effect as if fully set forth at length herein.

18. Denies the truth of each and every allegation contained in paragraphs numbered "41" and "42" of the Complaint.

AS AND FOR AN ANSWER TO THE EIGHTH CAUSE OF ACTION

19. Answering paragraph number "43" of plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs "1" through "16" with the same force and effect as if fully set forth at length herein.

20. Denies the truth of each and every allegation contained in paragraph number "44" of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to state a claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

If Plaintiffs fail to appear for a hearing pursuant to General Municipal Law 50-H Defendants preserve their right to move to strike all state law claims should be dismissed.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Plaintiff's constitutional and statutory rights were not violated by the defendants.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims against the answering defendants are frivolous.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

Defendants acted in good faith and without the intent to violate plaintiff's civil rights.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

If the plaintiff sustained damages as alleged in the complaint, which is expressly denied by these answering defendants, then, such damages were caused in whole or in part by the culpable conduct of the plaintiff. The amount of damages otherwise recoverable, if any, shall therefore be diminished in the proportion that said culpable conduct attributable to plaintiff bears to the culpable conduct that caused such injuries.

AS AND FOR SEVENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to recover punitive damages against the Defendants since the conduct alleged did not rise to the level of morally culpable conduct that would support such a claim.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

Any and all officers named in this suit are protected from suit by the doctrine of qualified immunity.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

Any and all officers named in this suit are protected from suit by the doctrine of absolute immunity.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

The City of Mount Vernon cannot be held liable based on respondent superior for the alleged violations of plaintiff's civil rights.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

The actions of the defendants were justified under the circumstances.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

The Defendants acted pursuant to the fellow-officer rule and are thus free from liability in this matter.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

The Officers herein engaged in a search pursuant to a valid search warrant and are thereby not liable.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

The affidavits supporting the search warrant were complete and thorough and provided probable cause.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

The officers had probable cause to search and seize the Plaintiffs.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

The officers had arguable probable cause.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

The officers determined that there was a fair probability that contraband and weapons or evidence of a crime would be found at the location in question so they had legal authority to enter the Plaintiff's premises, to search the premises and secure the premises.

AS AND FOR A EIGHTEENTH AFFIRMATIVE DEFENSE

The warrant granted to the officers was issued on probable cause and was not the result of fraud, perjury or suppression of evidence by the police, and for this reason the Defendants are not liable.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

The Defendants did not have a conspiratorial agreement with any other entity against the Plaintiff.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

There is no evidence in the record from which one could draw an inference of conspiracy.

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

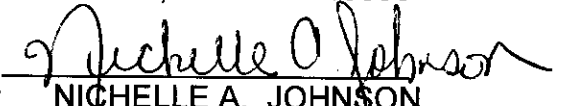
There is no policy, custom in the City of Mount Vernon which caused a violation of the Plaintiff's constitutional rights, thus Plaintiff is not entitled to any relief under any Monell claims.

WHEREFORE, Defendants, CITY OF MOUNT VERNON, THE MOUNT VERNON POLICE DEPARTMENT and POLICE OFFICERS "JOHN DOE", "RICHARD ROE", fictitious names, true names unknown, demand judgment dismissing the Complaint together with such other and further relief as this Court deems just and proper.

Dated: Mount Vernon, New York
January 11, 2008

Yours, etc.,

Office of the Corporation Counsel
Attorney for Defendant
The City of Mount Vernon
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By: 
NICHELLE A. JOHNSON
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